v. *Manice, supra,* expressly stated that such a direction would be invalid under the statute. See *Smith* v. *Parsons, supra,* 120. Unless both directions are held valid, it is submitted that the practical results of the view advanced here are the better, for if the other view be taken, i. e. that "sole benefit" means total possible legal benefit, both directions are invalidated, thus defeating the apparent object of the statute, the policy of the court as to infants, and the intent of the testator, for the infant will take the accumulations as they accrue, since he is the person presumptively entitled to the next eventual estate. 38 N. Y. Law Jour. No. 132; 7 COLUMBIA LAW REVIEW 403.

LIBERTY OF CONTRACT AND THE COMMERCE CLAUSE.—Section 10 of the Erdmann Act, passed in 1898 in the hope of preventing railway strikes, and providing for voluntary arbitration of labor disputes between interstate carriers and their employees, made it a misdemeanor for an interstate carrier or its agent to dismiss an employee because of his membership in a labor union. This section has recently been held unconstitutional by the Supreme Court, two Justices dissenting. *Adair* v. *United States* (Jan. 27, 1908). Two grounds were given for the decision: (1) The Act deprived the plaintiff, an agent of a railway company, of the liberty guaranteed him by Amendment V, U. S. Const.; (2) The subject of the section bore no such relation to interstate commerce as to warrant Congressional regulation. The second ground indicates a slight narrowing of the court's interpretation of the commerce clause. Congress has power over the persons engaged in interstate commerce in so far as its action constitutes a regulation of that commerce; *Cooley* v. *Board of Wardens* (U. S. 1851) 12 How. 299, 316; 7 COLUMBIA LAW REVIEW 116; although it may not interfere with their general business affairs. *Employers' Liability Act Cases* (1908) 207 U. S. 463, 502; *Interstate Commerce Commission* v. *Harriman* (1908) 157 Fed. 432. But, although Congress possesses a large discretion as to the means of executing its power, *Lottery Case* (1902) 188 U. S. 321, 355, the professed regulation must always bear a substantial relation to interstate commerce. *United States* v. *E. C. Knight Co.* (1894) 156 U. S. 1; *Hopkins* v. *United States* (1898) 171 U. S. 578; 7 COLUMBIA LAW REVIEW 116. In the principal case the connection between interstate commerce and the employee's membership in a labor union seems distinctly more remote than was the case even in the *Employers' Liability Act* decision. Had the regulation tended to increase the efficiency of the service, as by prescribing actual qualifications for employees, it would probably have been sustained; *Smith* v. *Alabama* (1888) 124 U. S. 465, 479; *Nashville etc. Ry.* v. *Alabama* (1888) 128 U. S. 96, 99; and the minority argued that the purpose of the Act indicated its beneficial nature beyond the reach of judicial determination. But a court may not decline to investigate the real character of a statute because of its nominal purpose and the confidence of its framers. *Lochner* v. *New York* (1904) 198 U. S. 45, 64. And here it was forced to conclude that the Act was not in fact a regulation of interstate commerce.

The other ground for the decision involves an interpretation of two apparently conflicting clauses in the Constitution. Although similar statutes passed by State legislatures have rarely been sustained, *People* v. *Marcus*

(1906) 185 N. Y. 257; *Gillespie* v. *People* (1900) 188 Ill. 176, this is believed to be the first time that an Act of Congress has been declared void as an invasion of the right of freedom of contract. The intimation of the court, that this right limits the power of Congress over interstate commerce, finds support in a previous dictum. *United States* v. *E. C. Knight Co., supra,* 39 (dissenting opinion); contra, *Addyston Pipe & Steel Co.* v. *United States* (1899) 175 U. S. 211 (dictum). Since the national government is one of enumerated powers the Bill of Rights must limit those enumerated powers, or it is unnecessary. The commerce clause has concededly some limitations in the Constitution. *Gibbons* v. *Ogden* (1824) 9 Wheat. 1, 196; *Lottery Case, supra,* 353. One of these is Amendment V. *Monongahela Navigation Co.* v. *United States* (1892) 148 U. S. 312, 336; *Interstate Commerce Commission* v. *Brimson* (1893) 154 U. S. 447, 479. Amendments I and IV are paramount to a similar grant of power, the post roads clause. *Ex parte Jackson* (1877) 17 Wall. 727. Under the guise of the commerce clause a man cannot be forced to incriminate himself; *Counselman* v. *Hitchcock* (1891) 142 U. S. 547; *Interstate Commerce Commission* v. *Brimson, supra;* nor may his property be taken for public use without just compensation; *Monongahela Navigation Co.* v. *United States, supra;* nor, it seems, may he be deprived of it. See *United States* v. *Adair* (1907) 152 Fed. 737, 755. It would appear, therefore, that the personal rights of the individual should receive the same protection.

The word liberty in the 5th and 14th Amendments has been very broadly construed by our Courts. *Allgeyer* v. *Louisiana* (1896) 165 U. S. 578. How far this was warranted by the traditional rights of Englishmen as defined by Magna Charta, see 4 H. L. R. 365, and how far determined by the political ideals of the Revolution, Prentice, Fed. Power over Carriers and Corp., p. 25, is of historical interest only. But the right secured by the amendments has never been held to include the freedom to make absolutely all contracts. *Lochner* v. *New York, supra; United States* v. *Joint Traffic Ass'n* (1898) 171 U. S. 505; see *Aikens* v. *Wisconsin* (1904) 195 U. S. 194. The States may abrogate it in the exercise of their police powers. *Lochner* v. *New York, supra.* Likewise, Congress may make police regulations with regard to those matters expressly entrusted to its care, even though incidentally it abrogate freedom of contract. *Lottery Case, supra,* 357; *In re Debs* (1894) 158 U. S. 564, 579; *Patterson* v. *Bark Eudora* (1903) 190 U. S. 169. It is obviously impossible to determine exactly what is meant by the right to make all lawful contracts. Yet negatively it may be said that no one has a constitutional right to make contracts which are opposed to a definite public policy. None such are protected by the Bill of Rights. This principle explains several cases in which the plea of liberty of contract was unsuccessfully invoked. In *United States* v. *Joint Traffic Ass'n, supra,* where it was held that the Sherman Act, previously declared constitutional, *United States* v. *Trans-Missouri Freight Ass'n* (1897) 166 U. S. 290, prohibited an agreement between railway companies to maintain agreed rates, the court, while adopting the broad construction of the Act laid down in the *Trans-Missouri* case, intimated that, though the rates themselves were reasonable, the combination was an unreasonable restraint of trade, destroying competition, and therefore undeserving of protection under the 5th

Amendment. The dependence of the citizen's personal rights upon the established economic policy of the nation was emphasized in *Northern Securities Co.* v. *United States* (1904) 193 U. S. 197 by Harlan, J. "The constitutional guarantee of liberty of contract does not prevent Congress from prescribing the rule of free competition for those engaged in interstate and international commerce." Brewer, J., however, found as a fact an unreasonable restraint of trade. In the principal case no such criticism of the plaintiff's conduct was possible. *Boyer* v. *W. U. Tel. Co.* (1903) 124 Fed. 246. In the *Employers' Liability Act Cases, supra,* the court declined to discuss the point. In general, moreover, liberty of contract does not prevent legislatures from establishing the ordinary rules of liability, and from that standpoint the only question was whether Congress had jurisdiction over the subject of the Act, the relation of master and servant. Cf. ibid., 537.

In the principal case the plaintiff was a natural person. But since a corporation is a person within the meaning of the 4th, *Hale* v. *Henkel* (1905) 201 U. S. 43, 76; 6 COLUMBIA LAW REVIEW 343, and 14th Amendment, *Gulf, etc. Ry. Co.* v. *Ellis* (1897) 165 U. S. 150, and two other clauses of the 5th Amendment, *Monongahela Navigation Co.* v. *United States, supra; United States* v. *Joint Traffic Ass'n, supra,* semble, it would seem that it possesses a constitutional right to enter freely into contracts appropriate to its situation. Even in the case of public servants this should include the selection and retention of employees.

THE PRESENT STATUS OF THE TRUST FUND DOCTRINE.—By virtue of the original trust fund doctrine, a corporation holds its property in trust for the payment of its debts, and stockholders are not entitled to any share of the capital stock until those debts are paid. *R. R. Co.* v. *Howard* (1868) 7 Wall. 392. The doctrine at first applied only to the tangible property which composed the capital. *Wood* v. *Dummer* (Fed. 1824) 3 Mason 308. Its supposed strength lay in preserving the fund intact, by giving creditors a lien in equity upon the fund against all but *bona fide* holders. *Sanger* v. *Upton* (1875) 91 U. S. 56. That it had any such effect while the corporation was solvent, is doubtful. In *Wood* v. *Dummer, supra,* the distribution was pursuant to dissolution; in *Curran* v. *Arkansas* (U. S. 1853) 15 How. 304, after insolvency. The question whether the holders of assets distributed without consideration during solvency, could be held liable after insolvency, when the distribution was not likely to, and did not, cause insolvency, was not presented. Any other result, however, would be incompatible with the doctrine as stated. Yet in *McDonald* v. *Receiver* (1899) 174 U. S. 397, a dividend paid out of the assets of a solvent bank, was held not recoverable after insolvency. Cf. *Lawrence* v. *Greenup* (1899) 97 Fed. 907. If a solvent corporation has "dominion over its assets," *Graham* v. *R. R. Co.* (1880) 102 U. S. 148, to this extent, the trust fund doctrine, if limited to its original scope, would be needless.

But the doctrine was extended to unpaid subscriptions to the capital stock, *Sawyer* v. *Hoag* (1873) 17 Wall. 610, including them within the fund, perhaps because they are a part of the capital stock. If so, this extension, it seems, should fall with the original. If stock subscriptions may be paid